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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 PAULA ALLISON, individually and on  
12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 INTERNATIONAL BUSINESS MACHINES  
16 CORPORATION, and DOES 1 through 50,  
inclusive,

Defendant.

Case No. 07-CV-1977 LAB CAB

**AGREED PROTECTIVE ORDER  
GOVERNING CONFIDENTIAL  
INFORMATION, POTENTIAL CLASS  
ACTION MEMBER CONTACT  
INFORMATION, AND THE  
INADVERTENT DISCLOSURE OF  
PRIVILEGED MATERIAL**

17 WHEREAS, the undersigned Parties have agreed to, and the Court approves, the  
18 following terms governing confidential information, potential class member contact information,  
19 and the inadvertent disclosure of privileged material, IT IS HEREBY ORDERED THAT:

20 1. A party may designate as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
21 ATTORNEYS’ EYES ONLY” any documents, discovery responses, electronic data, deposition  
22 transcripts, exhibits or other materials produced or generated in this matter that it reasonably  
23 believes should be subject to the terms of this Order. Material that may be designated as  
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY consists of documents and information whose  
25 disclosure would create a risk of injury that could not be avoided by less restrictive means.

26 2. Designations in conformity with this Order may be made as follows:

27 (a) for information in documentary form (other than depositions or other  
28 transcripts), by stamping or labeling the first page of each such document CONFIDENTIAL or

1 HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY or by any other reasonable means of  
 2 giving notice of the party’s intent to claim protected status of the material in question;

3 (b) for testimony given in deposition or other proceeding, by notifying all  
 4 counsel of record prior to, during or after the proceeding that the information provided in the  
 5 deposition or other proceeding is considered CONFIDENTIAL or HIGHLY CONFIDENTIAL –  
 6 ATTORNEYS’ EYES ONLY and that the transcript thereof shall be subject to the provisions of  
 7 this Order; and

8 (c) for information or items produced in some form other than documentary,  
 9 by stamping or labeling the exterior of the container(s) in which the information or item is stored  
 10 CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.

11 3. Documents and information designated CONFIDENTIAL in accordance with this  
 12 Order shall be used solely for the purpose of preparation, trial, and/or appeal of this action, and,  
 13 unless the Court rules otherwise, such documents or information shall not be disclosed to any  
 14 person other than (a) counsel of record to any party to this Order; (b) the legal, clerical, paralegal,  
 15 or other staff of such counsel to this action employed during the preparation for and trial and  
 16 appeal of this action; (c) Plaintiff Paula Allison; (d) the principals, officers, agents and employees  
 17 of Defendant whom Defendant believes in good faith have a need to review such documents or  
 18 information; (e) persons retained by either party to this Order to furnish expert services or advice  
 19 or to give expert testimony in this action (and their employees); (f) deponents, trial witnesses and  
 20 court reporters in this action; and (g) the Court, Court personnel and jurors. CONFIDENTIAL  
 21 documents or information disclosed to any such person shall not be disclosed by him/her to any  
 22 other person not included within the foregoing subparagraphs (a) through (g) of this paragraph.

23 4. Documents and information designated HIGHLY CONFIDENTIAL –  
 24 ATTORNEYS’ EYES ONLY in accordance with this Order shall be used solely for the purpose  
 25 of preparation, trial, and/or appeal of this action, and, unless the Court rules otherwise, such  
 26 documents and information shall not be disclosed to any person other than (a) counsel of record  
 27 to any party to this Order; (b) the legal, clerical, paralegal, or other staff of such counsel to this  
 28 action employed during the preparation for and trial and appeal of this action; (c) the principals,

1 officers, agents and employees of Defendant whom Defendant believes in good faith have a need  
2 to review such documents or information; (d) persons retained by either party to this Order to  
3 furnish expert services or advice or to give expert testimony in this action (and their employees);  
4 (e) deponents, trial witnesses and court reporters in this action; and (f) the Court, Court personnel  
5 and jurors. HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY documents or  
6 information disclosed to any such person shall not be disclosed by him/her to any other person  
7 not included within the foregoing subparagraphs (a) through (f) of this paragraph.

8         5. Any person who is to obtain access to material subject to this Order pursuant to  
9 paragraph 3(e) and/or 4(d) shall prior to receipt of such material (a) be informed by the party  
10 providing access to such material of the terms of this Order; (b) agree in writing to be bound by  
11 the terms of this Order by executing the attached Agreement; and (c) submit to the authority of  
12 this Court for enforcement of this Order.

13         6. If counsel for a party herein shall hereafter desire to make material subject to this  
14 Order available to any person other than those referred to in paragraphs 3 and 4 above, such  
15 counsel shall designate the material involved, identify the person to whom he/she wishes to make  
16 disclosure, and inform counsel for the opposing party of their desire. If the parties are  
17 subsequently unable to agree on the terms and conditions of disclosure to persons not enumerated  
18 in paragraphs 3 and 4, disclosure may be made only on such terms as the Court may order.

19         7. If a party objects to the designation of any document or information as  
20 CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY, counsel for  
21 the objecting party shall notify all counsel of record of the objection. If the parties’ dispute  
22 regarding the objection cannot be resolved by agreement, counsel seeking to challenge the  
23 designation may do so by filing a motion with this Court. The documents or information in  
24 question shall remain under the protection of this Order pending ruling on the motion.

25         8. Without written permission from the party with an interest in protecting material  
26 subject to this Order, or a court order secured after appropriate notice to all interested persons, a  
27 party may not file in the public record (except under seal) any material subject to this Order.  
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1           9.       The provisions of this Order shall not terminate at the conclusion of this action.  
2       Within sixty days after final termination of this action, including any appeals, the parties shall  
3       destroy or return to counsel for a party that produced materials subject to this Order originals and  
4       all copies of such materials. At such time, each party must certify that the terms of this paragraph  
5       have been complied with. Notwithstanding the provisions of this paragraph, and except as set  
6       forth in paragraphs 15 and 16, counsel are entitled to retain any work product, even if it contains  
7       material subject to this Order. Any such retained materials shall remain subject to the terms of  
8       this Order.

9           10.      Any material subject to this Order, and which is otherwise admissible, may be  
10      used at trial, provided, however, that the parties agree that they will work with the Court to  
11      identify trial procedures that will protect and maintain the non-public nature of highly sensitive  
12      information. Prior to the use at trial of material subject to this Order, all stamps, labels or other  
13      designations placed on the material pursuant to this Order shall be removed.

14          11.      Nothing contained in this Order, nor any action taken in compliance with it, shall  
15      (a) operate as an admission or assertion by any witness or person or entity that any particular  
16      document or information is, or is not, confidential or (b) prejudice in any way the right of any  
17      party to seek a Court determination of whether it should remain confidential and subject to the  
18      terms of this Order. Any party to this Order may request the Court to grant relief from any  
19      provision of this Order.

20          12.      Nothing herein constitutes or may be interpreted as a waiver by any party of the  
21      attorney-client privilege, attorney work product protection, or any other privilege.

22          13.      It is recognized by the parties to this Order that, due to the exigencies of providing  
23      numerous documents and the taking of testimony, certain documents, information or testimony  
24      may be designated erroneously as confidential, or documents, information or testimony that are  
25      entitled to confidential treatment may erroneously not be designated as confidential. The parties  
26      to this Order may correct their confidentiality designations, or lack thereof, and shall, at their own  
27      expense, furnish to all counsel copies of the documents or other materials for which there is a  
28      change in designation.

1           14.     Nothing in this Order shall prevent any party from using or disclosing their own  
2 documents or information, regardless of whether they are designated CONFIDENTIAL or  
3 HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY.

4           15.     The inadvertent or unintentional disclosure by any party of documents or  
5 information protected from discovery as an attorney-client communication, work product or  
6 otherwise protected under Federal Rule of Civil Procedure 26 (the "Privileged Material"),  
7 regardless of whether the information was designated as CONFIDENTIAL or HIGHLY  
8 CONFIDENTIAL-ATTORNEYS' EYES ONLY at the time of disclosure, shall not be deemed a  
9 waiver in whole or in part of that disclosing party's claim of privilege, either as to the specific  
10 documents or information disclosed or as to any other documents or information relating thereto  
11 or on the same or related subject matter. The recipient of such Privileged Material shall (i) return  
12 it, without retaining any copy of it, upon recognizing its status, or within three (3) days from a  
13 demand (the "Demand") by the disclosing party, whichever occurs first; (ii) destroy all  
14 summaries, notes, memoranda or other documents (or the portions thereof) referring to such  
15 Privileged Material; and (iii) not use such documents containing Privileged Material for any  
16 purpose until further order of the Court. If the receiving party disputes the disclosing party's  
17 Demand, the matter shall be presented by the disclosing party to the Court for resolution. Further,  
18 if the recipient has already shared such Privileged Material prior to recognizing its protected  
19 status or prior to a Demand for its return, that recipient shall promptly notify the other affected  
20 persons, and collect and return all copies.

21           16.     Plaintiff has requested, and Defendant has agreed to produce, subject to and two  
22 weeks after entry of this Order, (a) the full name and (b) full current or last known home address  
23 of any current or former employee who worked in position code 4272, 4273 or 4274 in the State  
24 of California between September 10, 2003 and the date the Designated Position Codes were  
25 discontinued (hereinafter, the name and address information referred to in this paragraph is called  
26 "Contact Information"). Plaintiff's counsel may use the Contact Information solely for purposes  
27 of contacting potential class action members for discovery and investigation purposes, subject to  
28 applicable limitations imposed by law, court order, and/or ethical rules. Prior to Plaintiff's

1 counsel's initial communication with potential class action members, Plaintiff's counsel shall  
2 confer with Defendant regarding the content of such communication. Plaintiff's counsel shall not  
3 disclose the Contact Information to anyone other than employees of Plaintiff's counsel to whom it  
4 is reasonably necessary to disclose the Contact Information for purposes of prosecuting this case  
5 and in accordance with this Order; shall notify Defendant in writing immediately or in no event  
6 later than three days after receipt of a subpoena or order issued in other litigation that would  
7 compel disclosure of the Contact Information; and shall return the Contact Information (including  
8 all copies or reproductions) to Defendant's counsel within 60 days after the final termination of  
9 this action.

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11 AGREED TO BY:

12 Dated: March 5, 2008

Altshuler Berzon LLP

13  
14 By: s/Rebecca Smullin

Attorney for Plaintiff

PAULA ALLISON

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1 Dated: March 5, 2008

Jones Day

2  
3 By: s/Donna M. Mezias

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6 MACHINES CORPORATION  
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21 Telephone: (212) 326-3939  
22 Facsimile: (212) 755-7306  
23 Admitted in Ohio not in New York

24 **ORDER**

25 Pursuant to stipulation of the parties for entry of the protective order to protect  
26 confidential information, **IT IS SO ORDERED.**

27 **IT IS FURTHER ORDERED**, subject to public policy, and further court order, nothing  
28 shall be filed under seal, and the court shall not be required to take any action, without separate  
prior order by the Judge before whom the hearing or proceeding will take place, after application  
by the affected party with appropriate notice to opposing counsel.

Dated: March 7, 2008

  
**CATHY ANN BENCIVENGO**  
United States Magistrate Judge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

PAULA ALLISON, individually and on  
behalf of all others similarly situated,  
Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES  
CORPORATION, and DOES 1 through 50,  
inclusive,  
Defendant.

Case No. 07-CV-1977 LAB CAB

**AGREEMENT TO BE BOUND BY  
AGREED PROTECTIVE ORDER**

I, \_\_\_\_\_, the undersigned, hereby acknowledge that I have received a copy  
of the Agreed Protective Order entered in this action, and that I have read the Order and agree to  
be bound by all of the provisions in it. I recognize that during my participation in this case, I may  
have occasion to read or hear matters that are designated CONFIDENTIAL or HIGHLY  
CONFIDENTIAL – ATTORNEYS’ EYES ONLY. I agree not to disclose any such matter to any  
person not entitled to receive disclosure of same under the provisions of the Order and to use any  
such matter solely in connection with my participation in this case. I also agree to return any  
materials protected by the Order to counsel for the party that supplied me with such materials as  
soon as my participation in the case is concluded.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Address